



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/973,416	11/14/97	HARA M	13700-0176

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EXAMINER
KRUEER, K

ART UNIT	PAPER NUMBER
1773	

DATE MAILED: 03/22/00 <sup>12</sup>

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

# Advisory Action

Application No.  
08/973,416

Applicant(s)  
Hara et al.

Examiner  
Kevin Kruer

Group Art Unit  
1773



THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☒ expires 4 months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on \_\_\_\_\_ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Mar 10, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

☒ The proposed amendment(s):

☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.

☒ will not be entered because:

☒ they raise new issues that would require further consideration and/or search. (See note below).

☐ they raise the issue of new matter. (See note below).

☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: see attached

- ☐ Applicant's response has overcome the following rejection(s):

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- ☐ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: NONE

Claims objected to: NONE

Claims rejected: 1-21

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

- ☒ Other Interview Summary, Paper #8

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*Advisory Action*

1. Applicant's arguments filed March 9, 2000 have been fully considered but they are not persuasive. Furthermore, Applicant's proposed amendments will not be entered because they raise new issues. More specifically, Applicant has added new limitations to the method claims which would limit the kneading temperature of the composition. Such a limitation would require further consideration and/or search.

Applicant argues that the claimed method of making the product results in a materially distinct product. Specifically, Applicant argues that by kneading the reducing agent and the hydrophillic thermoplastic and then adding said kneaded product to a hydrophobic resin, the resulting product is a dispersion of localized areas of hydrophillic thermoplastic and the reducing agent in a hydrophobic matrix. However, there is nothing in the specification which supports the argument that the method of processing results in such a product, or that the claimed method of making results in the dispersion, as Applicant argues. Applicant is reminded that when the rejected claims are product claims and when there is a substantially similar product taught in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct due to the process of making. See *In re Brown*, 173 U.S.P.Q. 685, and *In re Fessmann*, 180 U.S.P.Q. 324. In the present situation, Applicant must show that product which results from the claimed method is materially different than the product taught in the prior art. The most practical way to do this is with a side-by-side comparison of the claimed product and the product taught in the prior art. In the present situation, no such showing has been made.

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Furthermore, Applicant argues that the applied art is deficient because Seiyaku teaches that the ascorbic acid is released from the zeolite when contacted with food. However, there is nothing of record which states that the ascorbic acid is not released in Applicant's embodiment. Furthermore, it is not clear if the ascorbic acid taught in Seiyaku is being released to the surface of the zeolite, or if it is being released completely from the zeolite. Furthermore, the claims are not limited to a composition in which the ascorbic acid is not "released." Therefore, Applicant's arguments are not persuasive.

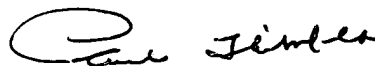
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R. Kruer whose telephone number is (703) 305-0025. The examiner can normally be reached on Monday-Friday from 7:00 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (703) 308-2367. The fax phone number for the organization where this application or proceeding is assigned is (703)305-5436.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0651.



Kevin R. Kruer  
Patent Examiner



Paul Thibodeau  
Supervisory Patent Examiner  
Technology Center 1700